

## AMENDED AND RESTATED SOLID WASTE SERVICE AGREEMENT

This Solid Waste Service Agreement (“Agreement”) is entered into on the \_\_\_\_ of \_\_\_\_\_ 2016, and effective on the 1<sup>st</sup> day of July, 2016 (the “Effective Date”) by and between the City of Cave Springs, Arkansas (the “City”), acting by and through its duly authorized Mayor, and Waste Management of Arkansas, Inc. (the “Contractor”), an Arkansas corporation, acting by and through its duly authorized representative.

### WITNESSETH:

**WHEREAS**, the City issued a request for proposal for residential solid waste and recycling services in 2008, and received a number of proposals in response;

**WHEREAS**, after a public hearing and consideration of the proposals, the City voted to select the proposal submitted by Roll Off Service, Inc. on or around October 13, 2008;

**WHEREAS**, the City passed Resolution No. 2008-10 that awarded the contract to Roll Off Service, Inc. under the terms of a Residential Solid Waste and Recycling Agreement;

**WHEREAS**, Roll Off Service, Inc. was acquired by Deffenbaugh of Arkansas, Inc., and Deffenbaugh of Arkansas, Inc. was acquired on or around March 26, 2015 by Waste Management of Arkansas, Inc.;

**WHEREAS**, Ark. Code Ann. § 8-6-201 et seq. requires every municipality to have a system in place to provide for the collection and disposal of solid waste; and

**WHEREAS**, the City and Waste Management of Arkansas, Inc. (“Contractor”) desire to extend the Agreement term and to make other modification to the Agreement as set forth herein in this Amended Agreement.

**NOW, THEREFORE**, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

- 1.1** “Acceptable Recyclable Materials” or “Recyclables” includes those materials listed on attached Page 5.
- 1.2** “Acceptable Solid Waste” or “Solid Waste” means all solid and semi-solid putrescible and non-putrescible refuse and garbage except for “Excluded Solid Waste.”
- 1.3** “Agreement” means this Solid Waste Service Agreement between the City and Contractor.
- 1.4** “Brush” Any cuttings or trimmings from trees, shrubs, or lawns, and similar materials. The term "Brush" specifically excludes limbs that are greater than four (4) feet in length, and specifically excludes debris resulting from services of a Commercial Service Provider.

- 1.5** “**Bulky Waste**” or “**Bulky Items**” means waste to include furniture, appliances, metal items, larger items not normally collected from the weekly residential collection programs. Items not considered bulky waste include construction materials, tires, paint, hazardous waste, pesticides, appliances containing Freon, and any item specified as Excluded Waste under 1.2 above.
- 1.6** “**Bundle**” or “**Bundles**” Tree, shrub and brush trimmings securely tied together forming an easily handled package, not to exceed four (4) feet in length, six (6) inches in diameter, or fifty (50) pounds in weight.
- 1.7** “**City**” means the City of Cave Springs, Arkansas.
- 1.8** “**Collect**” or “**Collection**” means to take physical possession, transport, and remove Solid Waste or Recyclables within the City.
- 1.8a** “**Commercial Waste**” means Solid Waste generated by a commercial establishment.
- 1.8b** “**Contract Area**” means the geographic area described as the incorporated boundaries of the City of Cave Springs, Arkansas.
- 1.9** “**Excluded Solid Waste**” includes, but is not limited to, medical waste, construction and demolition waste (except in roll-off containers), large bulky items, appliances, batteries, paint, items containing an engine or compressor, items containing CFCs or PCBs (such as white goods), and any radioactive, volatile, flammable, explosive, toxic or hazardous substance or material, including any substance listed or characterized as toxic or hazardous by any applicable federal, state, or local law.
- 1.10** “**Exclusive Right**” means Contractor shall have the sole right to collect residential, commercial, and industrial Solid Waste for disposal and recycling within the incorporated boundaries of the City of Cave Springs, Arkansas.
- 1.11** “**Extra Solid Waste**” or “**Extra Bags**” means any solid waste that will not fit inside the Provided Container.
- 1.12** “**Industrial Waste**” means Solid Waste generated by industrial establishments.
- 1.13** “**Provided Container**” or “**Container**” means the approved solid waste and recycling receptacles provided by Contractor.
- 1.14** “**Reduced Rate**” means a program offered senior citizens, age sixty-five (65) or older, or those with documented disabilities, who would receive reduced Solid Waste and Recycling collection services at a reduced rate. To participate in this program, the individual resident shall make application to Contractor for approval.
- 1.15** “**Non City Water Residential Unit**” means any occupied single-family residence, condominium, duplex, triplex or multi-unit dwelling place, within the corporate limits of the City, except that each single-family unit within a multiple dwelling unit that is not a customer of the city municipal water department. Each shall be billed separately as a Residential Unit. A Non-City Water Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied hereto.

- 1.16** “City Water Residential Unit” means any occupied single-family residence, condominium, duplex, triplex or multi-unit dwelling place, within the corporate limits of the City, except that each single-family unit within a multiple dwelling unit that is a customer of the city municipal water department. Each shall be billed separately as a Residential Unit. A City Water Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied hereto.

## **ARTICLE 2 TERM OF AGREEMENT**

**2.1** **Effective Date**

The Effective Date of this Agreement shall be July 1, 2016.

**2.2** **Term of Agreement**

The term of this Agreement shall be five (5) years commencing July, 1, 2016 and expiring on June 31, 2021 for Solid Waste and Recycling collection services, with an option to renew said Agreement, with the approval for both parties, for three (3) successive five (5) year terms. The Agreement will automatically renew unless written notification is delivered to the other party, in accordance with paragraph 8.1 below, at least ninety (90) days prior to the expiration of the initial term or any renewal term.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

**3.1** **Status**

Contractor shall be an independent contractor and not an agent or employee of the City.

**3.2** **Authorization**

Contractor has the authority to enter into and perform its obligations under this Agreement and Contractor has taken all actions required by law, its articles of organization, or otherwise to authorize the execution of this Agreement.

**3.3** **Compliance With Laws and Regulations**

Contractor shall comply with all existing and future city, county, state, and federal laws and regulations, including all environmental laws and regulations.

**3.4** **Discrimination Prohibited**

In the execution and performance of this Agreement, Contractor shall not discriminate against any person or persons because of sex, race, religion, color, national origin or other protected status. Contractor is an equal opportunity employer.

**3.5** **Performance of Services**

The work to be performed by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services, including all licenses and permits required under all applicable federal, state, and local laws and regulations.

**3.6 Quality of Services**

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough, diligent, and professional manner so that the residents, businesses, and industries within the City are provided, reliable, courteous and high-quality Solid Waste and Recycling collection services at all times.

**ARTICLE 4  
REPRESENTATIONS AND WARRANTIES OF CITY**

**4.1 Exclusivity**

The Agreement grants to Contractor the exclusive right to collect and dispose of all residential recyclables, and all residential, commercial, industrial Solid Waste and generated in the City under the terms and conditions as described in this Agreement. Notwithstanding this provision, the parties acknowledge and agree that the City shall maintain its long standing relationship with the Benton County Solid Waste District for the collection of recyclable materials in one (1) material separated recycling trailer at City Hall for the purpose of additional residential material recycling for the City. Further, the parties acknowledge that Inland Waste Solutions, LLC ("Inland") is a Solid Waste collection subcontractor to the Contractor for commercial and industrial Solid Waste collection services within the City. Inland shall be an approved contractor ("Approved Subcontractor") by the City who shall be permitted to perform commercial Solid Waste collection services pursuant to this Agreement provided that Inland abides by the terms and conditions of this Agreement applicable to Contractor for the collection of commercial Solid Waste within the City.

**4.2 Number of Residential Units**

There are approximately 1,200 to 1,300 residential units within the City of Cave Springs on the Effective Date of this Agreement. City shall be responsible for providing Contractor an accurate list of all residential units by street address and name of head of household, to the best of the City's knowledge. It is recognized that the number of residential units requiring Solid Waste and Recycling collection services will change from time to time. City agrees to provide an updated current list of occupied residential units to Contractor on a monthly basis.

**4.3 Use Of City Streets**

Contractor shall have the right and privilege to operate collection vehicles and equipment on such streets, public ways, rights-of-way, or easements of City.

**4.4 Administration of Agreement**

The Mayor of City, or the Mayor's designee, shall administer this Agreement.

**ARTICLE 5  
SCOPE OF SERVICES**

**5.1 Residential Solid Waste Collection Services**

**5.1.1 Provided Containers.** Contractor shall provide, at its own cost, one (1) approved 65-gallon Container with wheels and a lid for the collection of acceptable Solid Waste, and one (1) approved 65-gallon Container with wheels and a lid for the collection of acceptable Recyclables, for each residential unit. "Reduced Rate" residential units shall be provided one (1) approved 65-gallon Container with

wheels for the collection of acceptable solid waste and one (1) approved 65-gallon container with wheels for the collection of acceptable recyclables.

**5.1.2 Residential Waste.** Contractor shall collect Residential Waste generated at a Residential Unit and placed in a Provided Container one (1) time per week during the term of this Agreement. Provided Containers shall be placed by the Customer of a Residential Unit in a location that is readily accessible to Contractor and its collection equipment, not to exceed six (6) feet from the curb or edge of the travel portion of the street, road or alley, and not to be located in a manner that will block the driveway or mailbox or otherwise inhibit proper servicing. The City shall aid Contractor in resolving problems of Provided Container location by the Customer. Customers shall not overload Provided Containers, and the Provided Containers shall be loaded such that the lids shall close securely. Contractor shall not be required to collect (i) any Residential Waste that is not placed in a Provided Container, (ii) any Residential Waste from a Provided Container that is overloaded, or (iii) a Provided Container that is not properly placed curbside. One bag extra placed only on top of Provided Container shall be allowed.

**5.1.3 Residential Recycling.** Contractor shall provide once per week collection of Recyclables placed in Recycling Provided Containers from Residential Units. Contractor shall not be required to collect any Recyclable Materials that are not placed in a Recycling Provided Container.

The following are materials that Contractor will accept as Recyclables. These Recyclables must be loose, not bagged:

Aluminum food and beverage containers - empty	Ferrous (Iron) cans – empty
HDPE natural rigid plastic containers with the symbol #2 (milk and water bottles) – empty	PET plastic containers with the symbol #1 – with screw tops only - empty
Telephone books, Mail	HDPE pigmented rigid plastic containers with the symbol #2 (detergent, shampoo bottles, etc.) - empty
Copier paper	Newsprint
Old corrugated containers	Magazines, glossy inserts and pamphlets
Catalogs	Cereal boxes; detergent, gift and snack boxes
All other office paper without wax liners	Printer paper

Any material not listed above is a Non-Recyclable.

Non-Recyclable Materials include but are not limited to:

Bagged materials (even if containing Recyclables)	Rigid plastic tubs or containers with symbols #3, #4, #5, #6, #7 – empty
Glass food and beverage containers – brown, clear, or green – empty	Window or auto glass
Light Bulbs and Mirrors	Ceramics
Porcelain	Plastics unnumbered
Plastic bags	Coat hangers
Expanded polystyrene or polystyrene foam (e.g., foam packing peanuts)	Films (e.g., plastic grocery bags)
Glass cookware/bake-ware	Household items such as cooking pots,

	toasters, etc.
Flexible packaging and multi-laminated materials; foam products	Wet fiber
Unacceptable Waste	Fiber containing, or that has been in contact with, food debris or other contaminating material
Any recyclable materials, or pieces of recyclable materials, less than 2” in size in any dimension	Materials: (a) that contain chemical or other properties deleterious, or capable of causing material damage, to any part of Company's property, its personnel or the public; and/or (b) that may materially impair the strength or the durability of the Company's structures or equipment.

**5.1.4 Delivery Specifications for Recyclables.** Recyclable Materials may not contain more than 12% Non-Recyclables. Contractor has the right to dispose of all contamination in a load of material and residue resulting from or remaining after processing of the materials. The City shall not discontinue collection of any material listed as a Recyclable, nor divert or withdraw from the Recyclables any materials. The City shall not allow scavenging of Recyclables.

**5.1.5 Market Changes.** Contractor makes no representations as to the marketability of the Recyclables, and when no reasonable commercial market exists for a recyclable, Contractor reserves the right to dispose of that material. In the event that a change in applicable law or a material change in market conditions occurs, including but not limited to lack of commercially reasonable market availability for processed Recyclables, changes in market specifications affecting the salability of processed Recyclables, changes affecting the recyclability or marketability of Recyclables, changes in the quantity, quality or composition of the Recyclables, (each a “Material Change”), that has the effect of materially altering the terms of this Agreement, or preventing or precluding compliance with one or more provisions of this Agreement, or preventing, precluding or substantially affecting the benefit(s) bargained for under this Agreement, including profits of Contractor, this Agreement shall be modified or suspended, with the consent of the City provided that such consent shall not be unreasonably withheld, as may be necessary to comply with, ameliorate, or prevent the detrimental effects on the Agreement of, such Material Change. A party detrimentally affected by a Material Change shall so notify the other party and request amendment to this Agreement accordingly, and the parties shall engage in good faith negotiations for a period of not less than six (6) months after such request regarding such amendments of this Agreement that reflect the extent to which the provisions hereof have been, or should be, so modified or suspended. If a Material Change precludes or reduces any of Contractor’s rates or other revenues, then the parties shall modify this Agreement in accordance with this provision in order that Contractor can achieve, on an ongoing basis, profits that existed immediately prior to the change in applicable law.

**5.1.6 Residential Yard Waste.** Contractor will provide residential yard waste service one (1) time per week. Bundles and/or Brush must be limited to a total volume per week of 1 cubic yard or less. Contractor shall have no obligation to collect any Brush or Bundles in excess of the 1 cubic yard pile limit, or any Construction Debris produced by a Commercial Service Provider hired by a Customer and generated and located at that Residential Unit.

**5.1.7 Accessibility.** All Containers of acceptable solid waste and recyclables must be placed at the curb, or within six (6) feet of the curb, of each residential unit by 6:00 a.m. on the designated weekly

collection day. Contractor will provide front porch or house line service to any resident (1) age sixty-five (65) years or older or (2) who has a documented disability that makes curbside set out of Provided Containers difficult.

**5.1.8 Frequency.** Contractor shall collect from Residential Units one time each week on a designated collection day. Collection of Solid Waste shall begin no earlier than 7:00 a.m. and shall not extend beyond 6:00 p.m. No residential collection shall be made on Sunday.

**5.1.9 Holidays.** The following shall be holidays for the purpose of this Agreement: Thanksgiving, Christmas, and New Year's Day. Contractor shall suspend service on these holidays, but will make up the collection by providing service on the next business day following the holiday. Should the holiday be on Friday, Contractor will make up the collection by providing that service on Saturday.

**5.1.10 Resident's Responsibility for Containers.** Contractor shall retain ownership of all Provided Containers for residential use. Upon request, Contractor shall replace damaged or lost containers at Contractor's cost of \$100.00 per container billable to and payable by the resident unless such damage is caused by Contractor. If a resident fails to return a container to Contractor upon moving from a Residential Unit, Contractor shall bill the resident for the replacement cost of the containers at the aforesaid rate.

**5.1.11 Size and Limitations.** Residents shall be limited to the amount of Bagged Solid Waste that will fit inside the Provided Container. Residents can have an extra Provided Container for \$12.00 per month. See Section 6.2.1 for pricing.

**5.1.12 Routes of Collection.** Contractor shall establish collection routes and a schedule of collection days approved by the City.

**5.1.13 Complaints.** Contractor shall establish a complaint procedure for prompt resolution of customer complaints. Contractor shall be responsible for maintaining a log of complaints and shall provide the City, when requested, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, and manner and timing of its resolution. Contractor shall collect any missed pickups of residential Solid Waste and Recycling on the same business day if Contractor is notified by 2:00 p.m. If notified after 2:00 p.m., Contractor shall collect missed pickups of residential Solid Waste and Recycling no later than 12:00 a.m. the next business day.

**5.1.14 Spillage.** Contractor shall not be responsible for scattered refuse unless the acts of any of its officers, employees, agents, sub-contractors, or their agents, caused the same. In which case, Contractor shall promptly pick up all scattered refuse. Contractor shall maintain appropriate tools on each truck for clean-up activity.

## **5.2 City Facility Solid Waste and Recycling Containers**

Contractor shall provide the City a 4-yard container for the collection of acceptable solid waste at City Hall / Fire Department, a 2-yard container at the Tank Lot, and an 8-yard container for the collection of cardboard at City Hall. These containers, including hauling, will be at no cost to the City.

## **5.3 City Wide Residential Clean Up**

Contractor shall provide, at no cost to City, two (2) 30-yard containers on a Friday and Saturday of the same weekend during the spring and fall seasons, or as otherwise determined by the City, not to exceed two weekends total per calendar year. Additional containers shall be provided at a cost to City of

\$315.00 per haul, including disposal and delivery. Contractor shall be given exclusive right to provide additional 30-yard containers for the segregation and collection of metal items to be recycled.

#### **5.4 Commercial & Industrial Solid Waste Collection Services**

- 5.4.1 Commercial Exclusivity.** Contractor, and the Approved Subcontractor if applicable, shall have the exclusive right and responsibility to negotiate commercially reasonable pricing and enter into service agreements directly with any commercial business within the City's limits for the provision of solid waste collection, disposal, and recycling services. The billing rates, terms, and conditions for such services do not require the approval of the City, however a franchise fee shall be collected by the Contractor, or its Approved Subcontractor, equal to four percent (4%) of the total collected receipts from commercial units, excluding sales tax. The Contractor, or Approved Subcontractor, shall be remit the franchise fees it collects from said commercial customers to the City within 30 days of receipt of said fees.
- 5.4.2 Industrial Exclusivity.** Contractor shall have the exclusive right and responsibility to negotiate industrial reasonable pricing and enter into service agreements directly with any industrial business within the City's limits for the provision of solid waste collection, disposal, and recycling services. The billing rates, terms, and conditions for such services do not require the approval of the City, however a franchise fee shall be collected by the Contractor equal to four percent (4%) of the total collected receipts from industrial units, excluding sales tax. The Contractor shall be remit the franchise fees it collects from said industrial customers to the City within 30 days of receipt of said fees.
- 5.4.3 Spillage.** Contractor shall not be required to pick up commercial excess refuse or refuse spillage around the container not caused by the acts of Contractor in servicing the container. Such spillage shall be reloaded into the container by the customer and shall be picked up by Contractor at the next regularly scheduled pick up. If the excess refuse or spillage results in an extra non-scheduled pickup, an extra collection charge will be assessed to the customer. Should such commercial spillage continue to occur, City and Contractor may require the customer to utilize a commercial container with a larger capacity, and Contractor may be compensated by the customer for such additional services.

### **ARTICLE 6**

#### **RATES, FEES, BILLING AND PAYMENTS**

##### **6.1 Billing of Non City Water Residential Customers**

Contractor shall be responsible for all billings to and collections from residential customers that are not customers of the City's water department, under this Agreement. Contractor shall bill each Non City Water Residential Unit in advance for services to be provided for one quarter, and Contractor shall include in its invoice the City's 4% franchise fee (exclusive of any sales tax) in its bill. For these customers, payment is due upon receipt and is deemed late if not received by Contractor by the 20<sup>th</sup> day of the first month of each quarter. Past due customers are subject to suspension of service as well as late fee charges or interest charges. Contractor shall remit the franchise fees it collects from said customers to the City within 30 days of receipt of said fees.

##### **6.1.A Billing of City Water Residential Customers**



The City, acting through its municipal water department, will provide the billing and collection services for Contractor's services to all City Water Residential Unit customers in the corporate limits of the City of Cave Springs, Arkansas, that are also customers of the municipal water department. Any refund deemed necessary by Contractor will be made directly to the customer by Contractor.

The City will initiate billing for new customers and bill all customers in advance on a monthly basis at the basic rate plus applicable sales taxes, unless notified by Contractor in writing that a customer qualifies for another rate. City will also furnish new customers with service literature provided by Contractor.

The City, acting through its municipal water department, will provide Contractor with a printed or digital summary of all sanitation collections made in the preceding month. In addition to said summary, a listing will be provided of all sanitation customers that are delinquent in their payment. Contractor may request a detailed billing report listing all water customers being billed for sanitation services. The billing report will identify each water customer within the corporate city limits and the amount being billed for sanitation services.

Contractor will provide written notification to the City's water department of the name and address of all customers to be billed at any rate other than the basic monthly rate.

It is specifically agreed and understood by the Contractor that the City, acting through its municipal water department, will be providing only the billing and collection services as set forth herein. Contractor shall be responsible for maintaining an adequate staff to address all customer service issues. Customer service calls received at the municipal water department shall be transferred directly to Contractor's staff for immediate resolution.

The City, acting through its municipal water department, will remit monthly payments to Contractor for services rendered under this Agreement by the 15<sup>th</sup> day of each month. Monthly payments to the Contractor shall represent any sanitation payments received in the prior month, excluding applicable sales tax. The City shall deduct from each monthly payment to the Contractor the franchise fee authorized in Paragraph 6.3.5.

The State of Arkansas requires the business entity, which bills and collects applicable sales taxes to also remit tax collections directly to the State. Therefore, the City, acting through its municipal water department, will remit monthly sales taxes and reports directly to the State of Arkansas in compliance with state requirements. Any sales tax discounts received will be retained by the City as a processing fee for tax preparation and remittance expenses.

## **6.2 Residential Service Rates**

**6.2.1 Residential.** Each Residential Unit will automatically be enrolled and shall pay \$15.15 per residential unit per month for Solid Waste collection, Recycling and Yard Waste collection. Condominiums, duplexes, triplexes and multi-units, not using a commercial solid waste container, shall pay \$15.15 per unit in each building per month. Residential units with additional provided Containers will be billed an additional monthly rate at \$9.00 per additional container. (See Exhibit A – Pricing)

**6.2.2 Reduced Residential Rate.** The reduced residential rate is reserved for seniors sixty-five (65) years of age and older as well as disabled or special needs citizens. To participate in this program, the individual resident shall make application to the City for approval. Each reduced rate customer shall pay \$9.00 per residential unit per month. (See Exhibit A – Pricing)

**6.2.3 Bulky Waste and Special Pickups.** (See Exhibit A – Pricing). Advance scheduling with Contractor is required if any Residential Unit requires collection and disposal of (1) Bulky Waste, or (2)

a combined total of six (6) or more containers or bags of extra solid waste. These pickups will be billed at the following rates (grouped by like size):

\$15 Each – Small chairs, tables, 6 or more bags or containers of extra solid waste, etc.

\$20 Each – One or two cushion love seats, large chairs, twin mattresses, etc.

\$30 Each – Three cushion couches, full size mattresses, carpet rolls, etc.

**6.2.4 Commercial & Industrial.** Contractor shall negotiate commercially reasonable pricing and charges with commercial and industrial customers based on the amount of service needed at each location.

**6.2.5 Books and Records.** The City and Contractor agree to maintain at their respective places of business adequate books and records relating to the performance of their respective duties for the provision of residential, commercial and industrial Solid Waste and Recycling collection services under the provisions of this Agreement and such books and records shall be made available at any time during business hours for inspection by the other party, at the inspecting party's expense, upon reasonable advance notice.

**6.3 Rate, Fee and Cost Adjustments** – (upon any rate adjustment, Exhibit A - Pricing will be updated)

**6.3.1 Consumer Price Index.** Base rates charged by Contractor for services will remain fixed as set forth in this Article 6 and will not be adjusted for changes in the CPI (as hereafter defined), until April 1, 2017, and then continuing annually on each anniversary date of the Commencement Date of this Agreement. Base Rates for services shall be adjusted by the same percentage as the Consumer Price Index, US City Average for All Urban Consumers, Water, Sewer, Trash, Not Seasonally Adjusted, Base Period December 1983 = 100 (published by the United States Bureau of Labor Statistics, Consumer Price Index) (the "C.P.I.") shall have increased during the preceding twelve months of published indexes beginning January 1 and ending December 31. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the C.P.I., the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

Contractor shall notify the City in writing prior to any implementation of any CPI rate adjustment allowed under this Contract. Such notification shall include the amount of the rate adjustment, documentation substantiating the CPI index published numbers, and the date the adjusted rate will take effect.

**6.3.2 Change in Tax or Law.** In addition to the CPI adjustment to Contractor's compensation, the City and Contractor acknowledge and agree that changes in law, or mandates required under federal, state or local law, or the imposition of a tax on Contractor's service may increase Contractor's costs of providing the services required under this Agreement. Therefore, in the event of such change in law, permitting, regulation, rule or the imposition of a tax, fee, surcharge or assessment on Contractor's service, Contractor may make an adjustment in its compensation based on the change in law or imposition of a tax. Contractor shall calculate the impact on its costs and provide the calculations to the City together with a description of the law or that has been imposed and the effective date of the change.

**6.3.3 Increased Landfill Costs.** Contractor and City acknowledge and agree that increases in landfill disposal costs may increase Contractor's costs of providing the services required under this Agreement. Therefore, in the event of such change in disposal costs, Contractor may make an adjustment in its

compensation based on the change in disposal costs. Contractor shall calculate the impact on its costs and provide the calculations to the City together with a description of the law or that has been imposed and the effective date of the change.

**6.3.4 Fuel Surcharge.** In the event of an increase in the price of diesel fuel price, Contractor shall be permitted to impose a fuel surcharge. Every calendar quarter, the base rates shall be adjusted, when applicable, for a fuel surcharge as follows: an additional one percent (1%) for every twenty-cent (\$0.20) increase in the price of diesel fuel above and including \$3.10 per gallon (with a 1% surcharge beginning at \$3.10 per gallon and a 2% surcharge at \$3.30 per gallon, etc.). The fuel surcharge shall be correspondingly decreased one percent (1%) for every twenty-cent (\$0.20) decrease in the price of fuel above and including \$3.10 per gallon. The diesel fuel price shall be as determined by reference to the Energy Information Administration of the U. S. Department of Energy ("EIA/DOE")'s Weekly Retail On Highway Diesel Prices for the Gulf Coast. The EIA/DOE currently publishes these prices on their website at the following location: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>. The determination of the average price of diesel fuel from the aforesaid website shall be made on the first Monday prior to the end of the quarter (or the first business day thereafter if such Monday is a Federal Holiday).

**6.3.5 Franchise Fee.** The City shall retain a franchise fee equal to four percent (4%) of the total collected receipts from residential units, excluding sales tax.

## ARTICLE 7

### INDEMNIFICATION AND INSURANCE

#### 7.1 Indemnification

Contractor shall indemnify and hold harmless City and its officers, directors, employees and agents from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit arising from or in any way connected with: (1) the negligence or willful misconduct, or any action for which strict liability is imposed by law, of Contractor, its officers employees, agents, and/or subcontractors in performing services under this Agreement; or (2) the failure of Contractor, its officers, employees and/or agents to comply with any material provision of this Agreement or any applicable law, regulation, permit, or license. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

#### 7.2 Insurance

Contractor shall secure and maintain, at its own costs throughout this Agreement insurance of the following types and in amounts not less than shown below:

##### Worker's Compensation and Employer's Liability

Worker's Compensation	Statutory Amount
Employer's Liability	\$500,000 each person

##### Automobile Liability Insurance

Combined Single Limit	\$2,000,000 per occurrence
Employer's Liability	\$500,000 each person

### **General Liability Insurance**

Combined Single Limit	\$2,000,000 per occurrence
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#### **7.3 Title to Waste**

Contractor acquires title to Acceptable Solid Waste and Acceptable Recyclables when loaded onto Contractor's trucks. Title to and liability for any non-conforming or Excluded Waste will remain with the resident, commercial, or industrial customer at all times even if loaded onto Contractor's trucks.

### **ARTICLE 8 TERMINATION**

#### **8.1 Termination**

The City shall terminate this Agreement upon the insolvency of Contractor, or its successor or assign, as evidenced by the filing of either a voluntary or involuntary bankruptcy petition by, or for the behalf, of Contractor; the appointment of a receivership or trustee by, or for the benefit of Contractor; or the assignment of assets for the benefit of creditors by, or for the benefit of, Contractor.

#### **8.2 Notification**

If, at any time, Contractor should fail to perform any terms, covenants or conditions set forth in the Agreement, the City shall notify Contractor as set for herein of specific reasons in support of City's claim that Contractor has breached the terms and provisions of this Agreement. The City shall allow a thirty (30) day period from the date of receipt of said notice from City for Contractor to remedy any failure to perform. Should City deem the failure to perform remedied, the City may declare the Agreement in breach and terminate the same.

### **ARTICLE 9 MISCELLANEOUS PROVISIONS**

#### **9.1 Notices**

Any notice required to be provided under this Agreement will be in writing and will be deemed duly given upon the date received by the intended recipient if delivered by hand or by overnight courier, or three (3) days following the date deposited in the United States Mail, certified with return receipt requested, postage prepaid, addressed to the recipient at the address set forth below (or at such change of address as one party advises the other).

#### **CITY**

City of Cave Springs, AR  
Attn: Mayor  
P.O. Box 36  
137 North Main Street  
Cave Springs, AR 72718

With copy to: City Attorney  
Attn: Harrington Miller Law Firm  
R. Justin Eichmann  
P. O. Box 687  
Springdale, AR 72765-0687

## **WASTE MANAGEMENT**

Waste Management of Arkansas, Inc.

With copy to: Waste Management of Arkansas, Inc.

Attn: Public Sector Services Manager  
1041 Arbor Acres Avenue  
Springdale, AR 72764

Attn: Senior Legal Counsel  
9708 Giles  
Austin, TX 78754

### **9.2 Captions; Interpretation**

The section headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. The terms of this Agreement are the product of negotiation between the parties and are not to be construed as being drafted solely by one party and no presumption is to arise there from in favor of either party.

### **9.3 Severability**

If any provision of this Agreement is deemed invalid and unenforceable by any court of competent jurisdiction or under any statute, regulation, ordinance, executive agreement or other rule of law, such provision will be deleted or modified, at the election of the parties, but only to the extent necessary to comply with such ruling, statute, regulation, ordinance, agreement or rule, and the remaining provisions of this Agreement will remain in full force and effect.

### **9.4 Dispute Resolution**

The parties agree to work in good faith with each other to resolve any dispute arising out of the terms and services under this Agreement. Should an impasse result over a dispute, the parties agree to submit the dispute to mediation or to another type of dispute resolution process agreed to by the parties, prior to the institution of any legal proceeding. The fees and expenses of the dispute resolution process shall be shared equally by the parties. In the event it becomes necessary for either party to institute an action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses incurred to defend or prosecute such action.

### **9.5 Consequential Damages**

In no event will either party be liable to the other for special, incidental, consequential, or punitive damages, or lost profits.

### **9.6 Non-Waiver**

The failure of any party to insist upon strict performance of any of the terms, conditions, and provisions of this Agreement shall not be deemed a waiver of future compliance and shall in no way prejudice the remaining provisions of this Agreement.

### **9.7 Choice of Forum, Venue, and Consent to Jurisdiction**

This Agreement shall be construed in accordance with the laws of the State of Arkansas, without regard to conflict of laws principles. The parties agree, and hereby give their consent, that jurisdiction and venue of any action brought to enforce, relating to, or arising out of this Agreement will be exclusively in the state or federal courts having jurisdiction in the county where the services are provided.

### **9.8 Assignment of Agreement**

Contractor shall not assign this Agreement or any right accruing under the Agreement in whole or in part without the prior, express written consent of the City. In any assignment approved by the City in writing, the assignee shall fully assume the liability and obligations of Contractor herein.

**9.9 Force Majeure**

Neither party will be responsible for any failure or delay in the performance of all or any part of this Agreement caused by the acts of God and nature, intervention of government, war or threat of war, conditions similar to war, acts of terrorism, sanctions, blockades, embargoes, strikes, lockouts or other similar causes or circumstances that cannot reasonable be prevented by the party whose performance has been delayed or who has failed to perform. However, the party so affected promptly will be given notice thereof to the other party whenever such contingency or other act or circumstance becomes reasonably foreseeable, will use commercially reasonable efforts to overcome the effects thereof as promptly as possible, and will promptly give notice to the other party after the cessation of such effects. Neither party, however, will be required to resolve a strike, lockout or other labor problem in a manner, which it alone does not, in the party's sole discretion, deem reasonably proper and advisable.

**IN WITNESS WHEREOF**, City and Contractor have executed this Agreement as of the day and year first above written.

**CITY OF CAVE SPRINGS, ARKANSAS**

**WASTE MANAGEMNET OF ARKANSAS, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

Approved:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
City Attorney

**APPROVED SUBCONTRACTOR:**

Inland Waste Solutions, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A – PRICING

### Rate Per Residential Unit Per Month: \* \$ 15.15:

*For Solid Waste Collection:	\$ 9.00 (sales taxable)
*For Recycle Collection:	\$ 3.15 (tax exempt)
*For Yard Waste Collection:	\$ 3.20 (tax exempt)
Fuel Surcharge (Contractual):	\$ .0 (sales taxable)
Franchise Fee (4% to City):	\$ .61 (non-taxable)
Sales Tax (8.5%):	\$ .77
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<b>TOTAL</b>	<b>\$ 16.73</b>

### Extra Cart Rate Per Month: \*\* \$ 9.00:

**For Solid Waste Collection:	\$ 9.20 (sales taxable)
Fuel Surcharge (Contractual):	\$ .0 (sales taxable)
Franchise Fee (4% to City):	\$ .37 (non-taxable)
Sales Tax (8.5%):	\$ .78
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<b>TOTAL</b>	<b>\$ 10.35</b>

### Rate Per Residential Sr. Citizen Unit Per Month: \*\*\* \$ 9.00:

***For Solid Waste Collection:	\$ 4.35 (sales taxable)
***For Recycle Collection:	\$ 3.15 (tax exempt)
***For Yard Waste Collection:	\$ 1.70 (tax exempt)
Fuel Surcharge (Contractual):	\$ .0 (sales taxable)
Franchise Fee (4% to City):	\$ .37 (non-taxable)
Sales Tax (8.5%):	\$ .37
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<b>TOTAL</b>	<b>\$ 9.94</b>

### Bulky Waste and Special Pickups:

Advance scheduling with Contractor is required if any Residential Unit requires collection and disposal of (1) Bulky Waste, or (2) a combined total of six (6) or more containers or bags of extra solid waste. These pickups will be billed at the following rates (grouped by like size):

**\$15 Each – Small chairs, tables, 6 or more bags or containers of extra solid waste, etc.**

**\$20 Each – One or two cushion love seats, large chairs, twin mattresses, etc.**

**\$30 Each – Three cushion couches, full size mattresses, carpet rolls, etc.**